

TREATY¹ BETWEEN THE REPUBLIC OF AUSTRIA AND
THE CZECHOSLOVAK SOCIALIST REPUBLIC CONCERNING
THE REGULATION OF WATER MANAGEMENT QUESTIONS RELATING
TO FRONTIER WATERS, SIGNED AT VIENNA ON 7 DECEMBER 1967²

The Federal President of the Republic of Austria and the President of the Czechoslovak Socialist Republic have decided to conclude a Treaty concerning the regulation of water management questions relating to frontier waters.

Article I

TERRITORIAL SCOPE OF THE TREATY

This Treaty shall apply to water management questions and measures relating to frontier waters, that is:

- (a) sections of watercourses along which the State frontier between the Contracting States runs;
- (b) waters intersecting the State frontier and waters adjoining the State frontier where any water management measures applied to them in the territory of one Contracting State would have seriously adverse effects on water conditions in the territory of the other Contracting State.

Article 2

SUBSTANTIVE SCOPE OF THE TREATY

(1) The expression "water management questions and measures" within the meaning of article 1 shall apply to changes in the river regime, the regulation of watercourses, the erection of high-water embankments, protection against flooding and ice, land reclamation and improvement, water supply, cleaning, utilization of water power in accordance with paragraph 2, bridges and ferries, and also navigation matters in so far as they are related to hydraulic measures within the meaning of this Treaty, such as the maintenance of navigability and buoyage of the fairway, the removal of obstacles to navigation and the operation of a navigation information service.

(2) This Treaty shall not apply to

- (a) fisheries;
- (b) the utilization of water power in so far as it affects the power industry.

¹ Came into force on 18 March 1970

² United Nations, Treaty Series, vol.728, p313

Article 3
GENERAL OBLIGATIONS

(1) Each Contracting State undertakes to refrain from carrying out, without the consent of the other Contracting State, any measures relating to frontier waters within the meaning of article 1 (a) which would adversely affect water conditions in the territory of the other Contracting State. Consent may be refused only on serious grounds.

(2) The Contracting States further undertake to discuss in the Austrian-Czechoslovak frontier water commission referred to in article 14 (Commission), before instituting proceedings concerning water rights (article 10, paragraph 4), first sentence), and planned measures relating to frontier waters within the meaning of article 1 (b). The Commission shall endeavour to bring about agreement on such matters.

(3) In frontier waters within the meaning of article 1 (a), the two Contracting States shall have the use - without prejudice to acquired rights - of half of the natural water yield not increased by technical means.

(4) Where it is necessary to prevent the pollution of frontier waters, the Contracting States shall endeavour to introduce improvements and shall arrange for the purification of waste water arising from new sources.

(5) Each Contracting State shall further ensure, to the best of its ability, that the operation of hydraulic installations and facilities of all kinds in frontier waters does not harm the interests of the other Contracting State in the matter of water management.

Article 4
MAINTENANCE AND IMPROVEMENTS

(1) The Contracting States shall provide, as necessary, for the maintenance of the waters referred to in article 1, including the structures, installations and facilities in such waters, and shall make any necessary improvements thereto.

(2) The Contracting States shall, in accordance with their domestic regulations, promote the construction in their territory of hydraulic installations and facilities to provide protection against the danger of flooding and ice along frontier waters; measures shall also be taken to ensure that frontier waters are kept clean and to construct hydraulic installations and facilities for the drainage or irrigation of adjoining territory, for the supply of water to frontier communities and, lastly, for the utilization of water power from frontier waters or the improvement of navigation

Article 5

PERFORMANCE OF MAINTENANCE WORK

(1) Each Contracting State shall be responsible in its own territory for the maintenance of frontier waters and of regulatory structures and other hydraulic installations and facilities situated in such waters.

(2) Each Constructing states shall also be responsible for the maintenance of hydraulic installations and facilities constructed in its territory on the basis of a grand of water rights or by special agreement and serving the interests of the other Contracting State.

(3) The cleaning of the bed and banks of frontier watercourses shall be carried out as necessary and shall, as a general rule, be undertaken by each Contracting State in its own territory and at its own expense.

(4) The procedure for the dredging of fords shall be such that, as a general rule, each Contracting State in turn dredges an entire ford.

(5) Decisions concerning joint action in carrying out the works referred to in paragraphs 3 and 4 concerning the necessity for such action shall be taken by the Commission.

Article 6

PLANNING

(1) Planning for water management measures by the Contracting States shall be undertaken on the basis of general directives established by the Commission.

(2) The Contracting State concerned shall prepare the plans for measures to be carried out in its own territory. In specific cases where measures affect the territory of both States, the plants shall be prepared by the Contracting State designated by the Commission.

(3) The Commission shall ensure that the necessary data for planning are made available by the competent authorities of the Contracting States and that the necessary co-operation takes place in a suitable manner.

Article 7

EXECUTION OF MEASURES

(1) Water management measures, and in particular regulatory and other hydraulic works, shall in principle be executed by each Contracting State in its own territory.

(2) Decisions concerning the execution of measures - including major maintenance work – whose cost is to be borne by the two Contracting States jointly shall be taken by the Commission.

(3) Where it is necessary for measures to be executed in the territory of both States and such measures, for technical or economic reasons, can only be executed jointly, the method of execution shall be determined by the Commission.

Article 8

COSTS

(1) Each Contracting State shall bear the costs of the execution of water management measures which are to be carried out by it in its territory for its exclusive benefit.

(2) The costs of the execution of water management measures from which both Contracting States are to derive benefit shall be borne by the Contracting States in proportion to the benefit which each is to derive therefrom, regardless of whether the works are executed in the territory of only one Contracting State or in the territory of both.

(3) The costs of the execution of water management measures which are carried out in the territory of one Contracting State for the exclusive benefit of the other Contracting State shall be borne by the Contracting State which is to benefit from the measures.

(4) The Contracting States shall not reimburse to each other the costs connected with surveying, and with the planning and management of the works executed, save as otherwise agreed in individual cases.

(5) The provisions of paragraphs 1 to 4 Shall apply, as appropriate, in respect of costs connected with the maintenance and operation of hydraulic installations and facilities.

(6) Liability for costs whose apportionment is not otherwise regulated shall be determined by the Commission in accordance with the principles established in the preceding paragraphs.

(7) The Contracting States shall ensure that the costs are covered.

Article 9

REIMBURSEMENT OF COSTS

(1) Accounts concerning the cost of works executed and services performed for the benefit of both Contracting States or of works executed and services performed by one Contracting State

'for the benefit of the other Contracting State shall be rendered by the end of June of each year in respect of the preceding calendar year.

(2) In the rendering of accounts, works, services and materials shall, in principle, be set off against each other in non-monetary terms.

(3) Where the rendering of accounts over a period of time results in a balance in favour of one Contracting State which cannot be settled in accordance with paragraph 2, the balance shall as a general rule, be adjusted by means of a remittance. The currency of one Contracting State shall be converted into the currency of the other Contracting State on the basis of the officially quoted exchange rates. If, however, there is a manifest disparity between the services performed by the respective Contracting States, the Commission shall eliminate such disparity when making the assessment provided for in paragraph 4.

(4) The details concerning the assessment and the necessary comparison of costs of works, services and materials and concerning the rendering of accounts and the execution of payments shall be determined by the Commission. The Commission may also decide that settlement should be made through the provision of materials or, where appropriate, the performance of services required for the purposes of this Treaty.

(5) Remittances under paragraph 3 shall be made in accordance with the payments arrangements in force between the two Contracting States.

Article 10

PROVISIONS CONCERNING WATER RIGHTS

(1) Matters relating to water rights shall be adjudicated according to the law and by the authority of the Contracting State to whose territory the proceeding relates.

(2) In the case of installations and facilities to be constructed in the territory of both States, the grant of water rights for the part to be constructed in the territory of each State shall be made by that State's competent water management authority; in such cases, an effort shall be made to conduct the proceedings consecutively with the participation of both States. The competent authorities of the two Contracting States shall work in concert with a view to avoiding conflict between their respective decisions.

(3) In the case of installations and facilities which affect rights or interests in the territory of both States but are to be constructed in the territory of only one State, the proceedings shall be conducted by each Contracting State in its own territory. In such cases, the provisions of paragraph 2 shall apply as appropriate.

(4) Proceedings concerning water rights in a case coming within the jurisdiction of the Commission may not be instituted, save where delay would entail risk, until the Commission or the plenipotentiaries (annex A, article 1, paragraph 2) have taken up the matter. Thereupon the

water management authorities of the Contracting States shall, having regard to the provisions of this article, discuss to what extent and in what chronological order each Contracting State is to conduct the proceedings relating to water rights. If an agreed opinion cannot be reached, the case shall be referred to the Governments of the Contracting States through the intermediary of the Commission.

(5) The water management authorities of the Contracting States may communicate with in each other directly in matters relating to water rights.

(6) Existing water rights in respect of frontier waters and the obligations connected there with shall remain unaffected.

Article 11

WARNING SERVICE

(1) The competent authorities of the Contracting States, and in particular the hydrographic service and its local stations, shall notify each other as quickly as possible of any danger of flooding or ice or other danger arising in connection with frontier waters which comes to their attention.

(2) The general directives for the warning service shall be established by the Commission.

Article 12

EXTRACTION OF GRAVEL AND SAND

Gravel and sand may be freely extracted from sandbanks between the regulation lines of frontier waters within the meaning of article 1(a) for river engineering purposes in the frontier sector regardless of the position of such banks in the river bed, subject to prior agreement between the competent river engineering authorities of the Contracting States.

Article 13

MARKS, WATER GAUGES, HYDROMETRIC WORKS

(1) Topographical marks on the two banks and triangulation marks, permanent benchmarks, kilometre and hectometre marks and water gauges shall be maintained and, where necessary, augmented and renewed by each Contracting State in its own territory. The competent authorities of the Contracting States shall promote the conduct of hydrometeorological and hydrometric surveys and studies, the results of which shall be exchanged.

(2) Floating navigation marks and navigation marks on bridges and superstructures shall be installed and maintained by the Contracting States on an alternating basis at intervals of time to

be determined by the Commission. Riparian navigation marks shall be installed and maintained by the Contracting States in their own territory by agreement between them.

Article 14

AUSTRIAN-CZECHOSLOVAK FRONTIER WATER COMMISSION

(1) Water management questions, measures and works to which this Treaty applies shall be dealt with by the Austrian-Czechoslovak Frontier Water Commission.

(2) The Commission shall deliberate on the matters submitted to it. Decisions taken on the basis of such deliberations shall take legal effect upon approval by the Governments of the Contracting States.

(3) Details concerning the functions of the Commission and also its composition and rules of procedure are set out in the statute appended to this Treaty as annex A.

Article 15

CUSTOMS PROVISIONS

(1) Construction materials and working stock, with the exception of fuel used for land vehicles, transferred from the territory of one Contracting State to the territory of the other Contracting State for the execution of works under this Treaty shall be definitively exempt from all import and export duties. Such construction materials and working stock shall not be subject to any import restrictions.

(2) Land and water vehicles and equipment (machinery, tools, etc.) shall be provisionally exempt from the duties referred to in paragraph 1 provided that the articles concerned are declared to the customs. No deposit of security shall be made for the duty chargeable against them. Duty shall be payable in respect of any articles not returned within the prescribed time-limit. Articles imported from the territory of one Contracting State which have become unusable because they are completely worn out and are not returned for that reason shall be exempt from duty provided that they are left to the other Contracting State to dispose of freely.

(3) Persons engaged on works in the territory of the other Contracting State and imported and exported land and water vehicles, construction materials, working stock and equipment shall be subject to customs control by the Contracting State concerned.

(4) The two Contracting States reciprocally undertake to facilitate, through their customs administrations, the clearance through customs, duty-free, of land and water vehicles,

construction materials, working stock and equipment, as well as the necessary fuel, conveyed in transit for the execution of water management measures undertaken in accordance with this Treaty for the benefit of both States.

.....

Article 17

TECHNICAL AND FINANCIAL VERIFICATION

The Contracting States shall afford each other the opportunity jointly to inspect and appraise all works carried out under this Treaty. The execution of and accounting for public works carried out at joint expense or in accordance with article 8, paragraph 3, shall be verified jointly. Detailed provisions in this regard shall be laid down by the Commission.

Article 18

OBLIGATION TO FACILITATE THE APPLICATION OF TBE TREATY

The Contracting States shall endeavour to facilitate the application of this Treaty and the work of the Commission, having due regard to the interests of both States.

Article 19

SETTLEMENT OF DISPUTES

(1) Disputes concerning the interpretation or application of this Treaty shall be settled by the competent authorities of the two Contracting States. This provision shall not preclude settlement through the diplomatic channel.

(2) Any dispute which cannot be settled in such manner shall, at the request of either Contracting State, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted on an ad hoc basis in the following manner: each Contracting State shall, within three months after one of them gives notice of its intention to submit the dispute to an arbitral tribunal, appoint an arbitrator, and the arbitrators thus appointed shall agree upon a president, who shall be a national of a third State. If agreement concerning the president is not reached within six months after one of the Contracting States has given notice of its intention to submit the dispute to an arbitral tribunal, the appointment of the president shall be governed, unless otherwise agreed, by the provisions of article 45 of the Convention for the

Pacific Settlement of International Disputes of 18 October 1907,³ 3-1 in so far as those provisions relate to the choice of the president.

(4) The arbitral tribunal shall take its decision on the basis of this Treaty and by application of customary international law and of the generally recognized principles of law.

(5) The arbitral tribunal shall take its decision by majority vote. Its decisions shall be binding. Each Contracting State shall defray the expenses of its own arbitrator; the remaining expenses shall be defrayed by both Contracting States in equal proportions. The arbitral tribunal shall in all other respects be the master of its own procedure.

(6) The procedure for summoning and hearing witnesses and experts shall be governed *mutatis mutandis* by such provisions relating to legal assistance as may be in force between the two Contracting States.

Article 20

TRANSITIONAL PROVISIONS

(1) The provisions of this Treaty shall supersede the agreements previously concluded between the two Contracting States concerning the regulation of water management questions and measures relating to frontier waters.

(2) Works and measures begun or carried out before the entry into force of this Treaty shall be deemed to be works and measures within the meaning of this Treaty. Accounting in respect of such works and measures shall be effected in accordance with articles 8 and 9 of this Treaty.

Article 21

DOMESTIC OBLIGATIONS

Domestic regulations and obligations concerning water management measures and the defrayal of costs pertaining thereto shall not be affected by the obligations assumed by the Contracting States under this Treaty.

.....

ANNEX 1

STATUTE OF THE AUSTRIAN-CZECHOSLOVAK FRONTIER WATER COMMISSION

Article 1

³ British and Foreign State Papers, vol.100, p298

COMPOSITION OF THE COMMISSION

(1) A permanent commission, to be known as the Austro-Czechoslovak Frontier Water Commission, shall be established by the Contracting States for the purpose of dealing with the water management questions, measures and works referred to in article 14 of this Treaty.

(2) Each Contracting State shall send a four-member delegation to the Commission and shall appoint one member of the delegation as permanent plenipotentiary. If the need arises, experts may be summoned to participate in the Commission's deliberations.

(3) The Commission shall establish its own rules of procedure.

(4) Each Contracting State shall defray the expenses connected with the work of its part of the Commission.

Article 2

FUNCTIONS OF THE COMMISSION

(1) Within the sphere of activity defined in articles 1 and 2 of this Treaty, the Commission shall deal, in particular, with the following matters:

(a) the practical solution of technical and economic problems and the promotion of cooperation in the execution of hydraulic works;

(b) questions relating to specific cases of adverse effects on water conditions in accordance with article 3, paragraphs 1 and 2, of the Treaty;

(c) consideration of the need for measures in accordance with article 3, paragraph 4, and article 4, paragraph 1, of the Treaty;

(d) the planning of hydraulic works, the determination of methods of execution of such works, and matters relating to their maintenance;

(e) technical designs and budgets for hydraulic works, regulatory installations and other structures (bridges, dams, water-removal installations, etc.), schedules of execution for the structures, and inspection and acceptance of joint works and measures;

(f) liability for costs in accordance with articles 8 and 9 of the Treaty;

(g) verification of the implementation of decisions and execution of works and measures;

(h) questions relating to the extraction of gravel and sand;

(i) measures and works which are not to be carried out by the authorities of the Contracting States responsible for the administration of watercourses;

(j) questions relating to the cleaning of frontier waters;

(k) discussion of questions arising under article 2, paragraph 2, of the Treaty and their referral to the competent authorities;

(l) measures and works which affect frontier waters but are carried out purely on a domestic basis;

(m) exploration, measuring operations and the preparation of studies connected with hydraulic works in frontier waters; the exchange of experience in this field;

(n) questions relating to the crossing of the State frontier;

(o) measures to guarantee the joint use of detached portions of territory in the event of changes resulting from the natural deviation or agreed diversion of frontier waters;

(p) disputed matters.

(2) The plenipotentiaries may enter into direct contact with each other to deal with routine matters. They shall report on such contacts to the Commission at its next session.

Article 3

SESSIONS OF THE COMMISSION

(1) The Commission shall, as a general rule, meet in regular session once a year. A special session shall be convened within one month if one of the plenipotentiaries so requests.

(2) Except as otherwise agreed, sessions shall be held alternately in the two Contracting States.

(3) Sessions shall be convened by the plenipotentiary of the Contracting State in whose territory they are to be held, by agreement with the plenipotentiary of the other Contracting State.

(4) The agenda shall be drawn up by agreement between the plenipotentiaries before the session; it may be amended by agreement during the session.

Article 4

ORGANIZATION OF THE COMMISSION'S WORK

(1) The proceedings shall be presided over by the plenipotentiary of the Contracting State in whose territory the session is held.

(2) The proceedings of the Commission shall be conducted in the languages of the Contracting States.

(3) The agreement of both delegations shall be necessary for decision by the Commission.

(4) Identical records of each session shall be drawn up in duplicate in the languages of the Contracting States and signed by the plenipotentiaries of the Contracting States.

Article 5

APPROVAL OF THE COMMISSION'S DECISIONS

Decisions of the Commission shall not affect the right of the Governments to take decisions. Decisions may be carried out only if they are approved by the Governments of the Contracting States. The plenipotentiaries shall notify each other of decisions taken by their Governments.

.....

FINAL PROTOCOL

On the occasion of the signing of the Treaty concluded this day between the Republic of Austria and the Czechoslovak Socialist Republic concerning the regulation of water management questions relating to frontier waters, agreement has been reached on the following points:

1. The provisions of this Treaty shall not apply to services performed in connexion with the regulation of the river Morava (March) during the period extending from 13 March 1938 to 27 April 1945. The two Contracting States reserve the right to raise questions concerning a financial settlement in respect of works dating from that period in the course of other negotiations.

2. The balance in favour of the Republic of Austria resulting from the works carried out in connexion with the regulation of the river Morava (March) up to the end of the year 1965, in the amount of 431 039 man-hours of unskilled labour, shall be settled by The Czechoslovak Socialist Republic in non-monetary terms.

This Final Protocol shall form an integral part of the Treaty.

.....